

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 464 of 1979

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PATEL HARMANBHAI VAGHAJI LEGAL REPRESENTATIVE & DECEASED

Versus

PATEL RAOJIBHAI SOMABHAI

Appearance:

MR SANJIV DAVE for Nanavati & Nanavati Advocates
for Petitioners
MR UDAYAN P VYAS for BHARAT J SHELAT
for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/08/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 6th September, 1979 passed by the learned Sessions Judge, Nadiad in Regular Civil Appeal No. 171 of 1978 arising of the judgment and order dated 26th October, 1978 passed by the Jt. Civil Judge (SD), Nadiad in Regular Civil Suit No. 591 of 1972. The appellants before this Court are the original defendants. The aforesaid Civil Suit was instituted by the plaintiff for recovery of vacant possession of the suit land bearing

Gram Panchayat No. 617 (L) situated in Parabadiwala alias Bakrolwadwala Falia of village Dabhan. The plaintiff contended that the suit land was a residential plot of land. A house constructed on the said land, had fallen long ago and since then, the land was lying vacant. The suit land was purchased by the father of the plaintiff Somabhai Nathabhai in the year 1930 from then owner Naranbhai Bhailalbai. It was averred that though the suit land was purchased in the year 1930, no sale deed was executed at the relevant time and the sale deed [Exh. 38] was executed on 26th April, 1946. The predecessor-in-title Somabhai Nathabhai had partitioned his properties in his life time and the suit land went to the share of his son Raojibhai Somabhai, the plaintiff. To the south of the suit land is situated the land belonging to the defendant no. 1 which too was an open land and was being used for tethering cattle. However, in or around the year 1971, the defendant no. 1 wanted to construct a house on his land and requested the plaintiff to permit the defendant no. 1 to tether his cattle on the suit land till the defendant no. 1 made some suitable arrangement. The plaintiff agreed to permit the defendant no. 1 to tether his cattle on the suit land till the defendant no. 1 made some suitable arrangement. However, even after completion of the house, the defendant no. 1 did not make alternative arrangement for tethering his cattle. The plaintiff had, therefore, to demand possession of the suit land which the defendant no. 1 refused. Therefore, the suit.

The suit was contested by the defendant no. 1 by filing his written statement at Exh. 9. He claimed the ownership over the suit land and claimed that not only the defendant no. 1 but also the defendants no. 2 & 3 use to tether the cattle on the suit land. Thereupon, the defendants no. 2 & 3 were impleaded in the suit. The defendants questioned the identity of the suit land and alleged that the vendor Naranbhai had no right, title or interest over the suit land in the year 1930 and could not have disposed of the suit land in favour of the predecessor-in-title Somabhai Nathabhai from whom the plaintiff had inherited the suit land.

The learned trial Judge, having examined the evidence, held that the identity of the suit land was established and that the suit land originally belonged to one Mathurbhai Jijibhai who had two daughters viz., Bai Lakhi and Bai Hari. The vendor Naranbhai Bhailalbai was the son of Bai Lakhi and Bai Hari had no issue. By a release deed [Exh. 126] executed on 22nd June, 1918, Bai Hari relinquished her right over the properties mentioned

in the said release deed in favour of the vendor Naranbhai Bhailalbai for a sum of Rs. 400/=. Thus, the ownership of Naranbhai Bhailalbai of the suit land was held to have been established. The fact that the suit land was sold to Somabhai Nathabhai in the year 1930 for a sum of Rs. 400/= and that since then the said Somabhai Nathabhai was in possession of the suit land as an owner is reflected in the sale deed [Exh. 38] executed on 26th April, 1946. Hence, the learned trial Judge has recorded a categorical finding that the suit land was validly sold by the predecessor-in-title to the purchaser Somabhai Nathabhai. It has also been established that the suit land came to the share of the plaintiff Raojibhai Somabhai and was of his exclusive ownership and possession. The defence that the suit land belonged to the defendant no. 1 or that a room standing on the suit land was mortgaged to the defendant no. 1 and thus the defendant no. 1 was in exclusive possession of the suit land has not been established before the trial Court. The finding as regards the ownership and the possession of the suit land recorded by the trial court has been confirmed by the lower Appellate Court also.

In view of the concurrent finding recorded by both the courts below, I see no merits in the contention that the courts below have erred in appreciating the evidence before it and in decreeing the suit. In any view of the matter, the question whether the evidence is correctly appreciated or not is beyond the scope of the second appellate jurisdiction of this court. No question of law much less a substantial question of law is involved in this appeal.

Appeal is dismissed with costs throughout.
Interim stay operating pending this appeal stands vacated.

Prakash